No. 82-1424

IN THE

SUPREME COURT FOR THE UNITED STATES

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, Respondent

v.

ROOSEVELT CHAMBERS, Petitioner

ON WRIT OF CERTIORARI FROM THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI

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I. QUESTIONS PRESENTED

1. Whether a Terry-stop has occurred when an airline passenger is approached at a terminal by a narcotics officer and is asked to accompany him to what he calls a "disclosed room"?

2. Whether there is reasonable articulable suspicion for a Terry-stop where police officers are acting on a mere hunch unsupported by a drug-courier-profile or any conduct of the defendant other than the fact that he bought a one-way ticket, looked at an agent out of the corner of his eye, and twice glanced at his bag as it was being conveyed to his airplane.

3. Whether an airline passenger's consent to a search of his checked bag and carry-on luggage is revoked when the passengers runs out of the airport, carrying one of the bags, and is chased by the police.

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III. TABLE OF AUTHORITIES

IV. OPINION BELOW

On 20 December 1982, the United States Court of Appeals for the Ninth Circuit affirmed defendant's conviction for Interstate Travel in Aid of Racketeering (18 USC §§ 1952(a)(3) and 2). The Court's opinion is not reported, but is set out at Appendix C to this petition. No motion to stay the mandate or for rehearing was filed. The mandate was issued on 11 January 1983. A motion to recall the mandate was filed on 26 January 1983, advising the Circuit Court of defendant's intention to petition for Certiorari.

V. JURISDICTIONAL GROUNDS

The jurisdiction of this Court is invoked under 28 USC § 1254 for a Writ of Certiorari from the United States Court of Appeals for the Ninth Circuit to review their opinion in this case entered on 20 December 1982.

VI. CONSTITUTIONAL PROVISION

This petition raises questions involving the United States Constitution, Amendment

Four and Fourteen.

Fourth Amendment

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be search, and the persons or things to be seized."

Fourteenth Amendment

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Untied States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

VII. STATEMENT OF THE CASE

A. Statement of the Facts

On 14 December 1981, Roosevelt Chambers, entered the Fort Lauderdale Airport carrying an American Tourister suitcase and leather carry-on bag. He was dressed in a jacket and

tie. He immediately went to the Delta Airline ticket counter and, using his American Express credit card, purchased a one-way ticket to Portland, Oregon. He did not display any cash. His suitcase was checked and placed on the baggage conveyor belt. Taking his ticket, he began to walk toward the departure terminal. Shortly thereafter, he was approached by Officer Capone, a plain-clothed, armed, Barrow County Deputy Sheriff assigned to the Narcotics Unit.

Agent Capone showed Chambers his badge and identification and asked in a voice he had "studied and practiced," if Chambers would "mind speaking to me." Chambers replied, "Sure." Upon request, Chambers provided his airline ticket which was inspected and returned. At that time, Capone advised Chambers that he was a narcotics officer and asked Chambers to accompany him to what he called the "disclosed room." That room was later described as being windowless

and having dimensions of approximately 10 by 20 feet. Chambers replied, "you can look" and then bolted from the terminal carrying his leather bag. Capone placed his revolver in plain view in his waistband and gave chase, yelling "stop police."

After Capone returned empty handed from the chase, he and his partner forced open Chambers' locked suitcase which had been removed from the conveyor belt after Chambers had run (District Court's finding of fact, RT 76). The search discovered approximately two kilograms of Cocaine.

Chambers' ticket, charge card and suitcase all bore his true name. The ticket also contained printed terms of bailment of his baggage to Delta Airlines specifying that it would be "delivered to bearer of baggage check." (RT. 42)

According to Capone, he had approached Chambers because Chambers had looked at him out of the corner of his eye, had stared at the ticket counter and had twice glanced at

his bag as it was on the conveyor belt. The deputies had received no information that Chambers would be carrying drugs and did not rely upon any form of a drug-courier-profile. The encounter with Chambers lasted three to four minutes.

The defendant did not testify at the motion to suppress, and all of the facts stated in this petition are based on the testimony of the Government's witnesses.

The District Court concluded:

(1) The encounter was based on a mere "hunch" rather than reasonable susci-pion;

(2) It was not a "stop" but rather an encounter not amounting to a Fourth Amendment seizure;

(3) Chambers consented to the search of his suitcase; and

(4) Chambers abandoned his suitcase by fleeing.

The defendant's motion to suppress was,

thus, denied, and after a stipulated facts trial he was was convicted of Interstate Travel in Aid of Racketeering. He was sentenced to four years in the custody of the Attorney General.

B. The Basis for Federal Jurisdiction in the District Court

The defendant was charged with a violation of the penal laws of the United States, specifically, 18 USC §§ 1952(a)(3) and 2.

VIII. ARGUMENT

A. This case raises questions of the demarcation of a Terry "stop" which have not yet been answered by this Court

The District Court, in denying defendant's motion to suppress, stated the reason this case merits review: "If I follow Mendenhall [United States v. Mendenhall, 446 US 544 (1950)], I would deny the motion; if I follow Reed [sic, Reid v. Georgia, 448 US 438 (1980)] I would grant the motion." (RT. 77)

This Court has granted Certiorari and heard arguments in a closely paralled case which may, indeed, be decisive here. In

Florida v. Royer, (Supreme Court No. 80-2146) this Court is also considering whether an airport police-citizen encounter was a Terry-"stop" (i.e., a "seizure" under the Fourth Amendment) or a non-seizure, mere encounter. Whether the encounter-versus-stop question presented here is different from that in Royer will depend on the test adopted by this Court in that latter case. This case may, thus, be resolved by Royer and disposed of by a remand for reconsideration in light of Royer. Or, the distinction between the facts here and those in Royer may merit full consideration by this Court to elaborate upon a Royer holding. In advance of a decision in Royer, the need for plenary consideration is speculative.

In Royer, as the facts appear from the briefs and the transcript of oral argument before this Court, the defendant was approached by narcotics agents at the Miami Airport who focused on him based on their drug-courier-profile. The agents identified themselves

and showed their badges. Royer was asked to produce his ticket, which he did. The ticket was not immediately returned. The police told Royer they suspected him of carrying drugs, and they asked him to accompany them to an interrogation room. After entering the room, and in response to a police request, Royer opened his suitcase.

The Department of Justice, as amicus curiae argued, "We strongly disagree that there was a seizure at the point of initial contact," (Tr. of Oral Argument, p. 28).

The threshold issue in both cases is what is a "stop" and from whose prospective is it to be decided? In other words, what degree of intrusion raises a mere encounter to a stop, and is that intrusion to be viewed from the prospective from a hypothetical reasonable person, the defendant or the police?

B. What is a stop

Neither Terry v. Ohio, 392 US 1 (1968), nor Sibron v. New York, 392 US 41 (1968),

defined a "stop," although both cases distinguished it from the right of a police officer to address questions to an individual. The unanimous opinion of this Court in Brown v. Texas, 443 US 47 (1979), prophesied a dividing line. There, uniformed officers got out of their patrol car, approached a man walking in an alley and asked him to identify himself and explain what he was doing there. When the man refused to comply, he was arrested for violation of a statute making it a crime to refuse to identify oneself when lawfully stopped. This Court reversed his conviction, holding that the statute, when applied to a stop not based on reasonable suscipion, violated the Fourth Amendment. In reaching that conclusion, the Court stated:

> "When the officers detained appellant for the purpose of requiring him to identify himself, they performed a seizure of his person subject to the requirments of the Fourth Amendment." 443 US at 50.

In the same year, this Court decided Dunaway v. New York, 442 US 200 (1979). The

facts in that case were summarized by the opinion of the dissenting justices as follows:

> "[T]hree police officers were dispatched to petitioner's house to question him about his participation in a robbery. According to the testimony of the police officers, one officer approached a house where petitioner was thought to be located and knocked on the door. When a person answered the door, the officer identified himself and asked the individual his name. * * * After learning the person who answered the door was petitioner, the officer asked him if he would accompany the officers to police headquarters for questioning, and petitioner responded that he would. * * * *"

The majority held (442 US at 222, 3) "there can be little doubt that petitioner was 'seized' in the Fourth Amendment sense when he was taken involuntarily to the police station." 442 US at 207.

In the following term, in United States v. Mendenhall, 446 US 544 (1980), this Court, without a majority opinion, affirmed a defendant's conviction for transporting drugs. Justices Stewart and Rehnquist concluded that no "seizure" had occured when defendant was,

while walking through an airport concourse, approached by drug agents who identified themselves and asked to see her ticket. Concurring in the result, Justices Powell and Blackman and the Chief Justice, did not reach the "seizure" issue. 446 US at 560, et seq. The four dissenting justices, in an opinion by Justice White, would have held that the issue was not properly before the Court, but noted "a majority of the members of the Court refused to reject the conclusion that Ms. Mendenhal was 'seized' * * * ." 446 US at 566. The dissent went on to state (in reliance upon Dunaway v. New York, supra):

> "Whatever doubt there may be concerning whether Ms. Mendenhall's Fourth Amendment interests were implicated during the initial stages of her confrontation with the DEA agents, she undoubtedly was 'seized' within the meaning of the Fourth Amendment when the agents escorted her from the public area of the terminal to the DEA office for questioning and a strip-search of her person." 446 US at 574.

Four justices of this Court, thus, hold to a position which would be decisive in this

defendant's favor. Two justices would hold to the contrary.

Later in the same term as Mendenhall, in Reid v. Georgia, 448 US 438 (1980), this Court again addressed the issue. In a per curiam opinion, it reversed a lower court's determination that there had been no seizure of a defendant who had been approached pursuant to a so-called "drug courier profile" by police officer's at the Atlanta Airport. Like this defendant, he had an initial conversation with the agents and, when asked to accompany them, fled and dropped his hand luggage. The opinion, in remanding for reconsideration in light of Mendenhall, reiterated that even a momentary stop "must be supported at least, by a reasonable and articuable suspicion." 448 US at 440. In dissent, Justice Rehnquist would have held there was no seizure. 448 US at 442.

Most recently, in Colorado v. Bannister, 449 US 1 (1980), the Court discussed the what is stop issue in the context of a vehicle

stop and stated: "There can be no question that the stopping of a vehicle and the detention of its occupants constitutes a 'seizure' within the meaning of the Fourth Amendment. 449 US at 4, fn 3.

None of these cases have produced a clear test of when a mere encounter has been raised to a stop. One commentatory, Professor LaFave, has rejected the notion that it is decisive whether a reasonable person would feel free to leave, noting the language of the Court in Illinois Migrant Counsel v. Pilliod, 398 F Supp 882 (ND Ill, 1975):

> "Implicit in the introduction of the [officer] and the initial questioning is a show of authority to which the average person encountered will feel obliged to stop and respond. Few will feel that they can walk away or refuse to answer."
> LaFave, Search and Seizure, §9.2, p. 50.

A test which looks to the subjective reaction of the citizen or of the officer is also unworkable, according to LaFave. In the first case, the police would not have a

standard for acceptable conduct, and in the latter case, it would be impossible to ever detect, in retrospect, whether a citizen's compliance was unfettred consent or submission to implicit authority. A citizen has the right to expect that police officers can and will exercise their authority without offensive or aggressive conduct. Even an arrest can, and usually should, be accomplished without any more overt restraint than a firm "please come with me."

LaFave suggests instead a test that focuses on whether the police have conducted themselves in a manner consistent with what would be viewed as "nonoffensive conduct if it occurred with two ordinary citizens." LaFave, Search and Seizure, §9.2, p. 53. He gives one example of conduct amounting to a seizure that is especially appropriate here: "Such tactics as pursuing a person who has attempted to terminate the contact by departing * * *." LaFave, §9.2 at 54.

The Defendant here was interrupted in his progress; he was asked by self-identified narcotics agents to produce his ticket and identification; and he was asked to go to a place referred to as a "disclosed room." At the point that agents of the state, with all the inherent authority which their badge and their right to be armed invest them, ask a citizen to interrupt his passage and go, for an undisclosed period of time, to the other side of a closed door, that person is detained. Applying LaFave's test, if the average person had been asked that by an ordinary citizen, he would have called the police.

Roosevelt Chambers' and Officer Capone's subjective impressions may not be the test, but they surely illustrate the coercion inherent in the moment. Chambers did not feel free to walk away, he ran. Officer Capone pulled his weapon into plain view and gave chase, yelling "Stop police." One intended and the other felt a restraint

beyond that which an ordinary citizen can normally impose on another. That is a seizure.

C. The stop was not based on articuable reasonable suspicion

The government has never seriously contend that there was any reasonable suspicion to stop Chambers. He did not fit the drug-courier-profile, he dressed as a businessman, and he paid for his ticket with an American Express Card in his own name. The only thing the least bit suspicious about him, according to the police, was that he looked at them out of the corner of his eye (when he was not staring straight ahead) and twice glanced to see the baggage moving down the conveyer belt. The District Court characterized this as a "hunch" and rejected the suggestion that it amounted to reasonable suspicion, stating:

> "And you can see from the expressions on the faces of these drug agents here that is true, they draw the suspicious inferences from each side of that coin. I don't say

that critically, but from the standpoint of analysis, if he goes up there and looks around, that is a badge of suspicion. If he goes up there and stares straight ahead, for example, I go up to the ticket counter and sometimes I stare straight ahead because I am madder than a wet hen over some scheduling foul-up that United or Northwest has involved me in, and I am staring a hole through that agent. And my eyes, if anything, are moving very slightly to either side. That is a badge of suspicion, when all it merely means is I am thinking to myself if there is any way in the world I can get back at these airlines, I am going to do it. And in drug terms, it's that innocent. But to a surveilling officer, it is at least at that juncture and for sometime thereafter a badge of suspicion.

"Okay. You have got the eye movement or lack thereof and the posture at the ticket counter, you have got a one-way ticket and you have got a shifting of the eyes---.

* * * * *

"There are a lot of folks at an airport who keep an eye on that bag to make sure it gets on that conveyor because they have had experiences in the past when they didn't do it and somebody at the airline goofed. And you and I end up in Ft. Lauderdale or Columbus or somewhere and you don't have a suitcase and your suitcase has got your shaver in it and that is enought to make anybody upset and irate. You

don't have to be an Article III judge to be upset over that." (RT 57-9)

D. The Defendant's consent was both invalid and revoked

If Defendant was "stopped" and if the stop was not based on reasonable suspicion, then the purported consent fails as the fruit of the poisonous tree. Brown v. Illinois, 422 US 590 (1975).

Even, however, if the encounter was lawful, the consent was revoked as a matter of law when the Defendant, carrying one of the bags and leaving the other on a common carrier, fled. It was only then that the suitcase was seized. (RT 76) It was apparent even to Officer Capone that Chambers "* * * didn't want to talk * * * from the moment he took off." (Tr. 19, 20)[1] Any consent he had given, he took back and took with him when he outraced agent Capone.

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1. The District Court also found that Chambers abandoned his suitcase by fleeing. That was not, however, a basis for the Ninth Circuit's opinion and, for that reason alone, is not raised here.

CONCLUSION

For the stated reasons, Petitioner prays that a writ of certiorari be issued to review the judgment rendered by the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

HOFFMAN, SLADER & MATASAR

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TRANSCRIPT OF PROCEEDINGS
P. 73-78

The facts of this case are not in any real dispute here. There was a brief encounter at the Ft. Lauderdale Airport about September 15th of this year.

Officer Capone saw the Defendant enter the terminal. He saw him go to a Delta counter where tickets may be purchased and baggage checked.

There Mr. Chambers purchased with a credit card a one-way ticket to Portland on a flight which had intermediate stops at Atlanta and Seattle.

Defendant checked on his suitcase but did not check his soft leather attache case. During the ticket transaction, he stared straight ahead and accord ing to Agent Capone, occasionally shifted his eyes from left to right without moving his head. Agent Capone and his partner there, Agent Jenkins, had taken up a position about four to five

feet from and on either side of and slightly behind the Defendant.

After the Defendant's suitcase was placed on the conveyer belt, he looked at it once or twice while it was moving on the belt toward its destination and while Defendant himself was walking toward the departure gate.

Capone's professional suspicion was aroused by the following:

A. Ft. Lauderdale is a source city for drugs;

B. Defendant purchased a one-way ticket as opposed, for example, a checking in for a return flight from Portland;

C. Defendant stared straight ahead except while looking left to right and had Defendant looked at his bag once or twice as it was moving away on the conveyer belt.

As a result of the arousal of his suspicions, Agent Capone approached Defendant and produced his identification. He

identified himself as a police officer and asked Defendant to stop and answer questions. Defendant said he would. Defendant also said he would go to a nearby room, a location for the conversation proposed by Capone. Defendant also said he had no objection if his suitcase and attache case were inspected.

Agent Capone, though armed, did not display his weapon.

Upon request, the Defendant produced his airline ticket. And in response to a question stated that he had no identification.

Upon receiving these responses with respect to the suitcase and attache case, Capone then signaled his partner, Jenkins, who was standing near the end of the conveyer belt. That is near the location where it would disappear from the checking area and hence the loading area.

Jenkins then stepped to the location along the conveyer belt where the suitcase was located. The conveyer belt was,

apparently, a start and stop affair common in some airport facilities. Thus, the suitcase was still in the area. Jenkins removed the suitcase.

In the meantime, Capone, after giving the signal to Jenkins, turned around and took a step or two toward the interview room. His testimony, as I remember, was one step, though there may perhaps have been more than one.

The Defendant also took one step, perhaps two, but Defendant then bolted for the door and left the terminal, his movements including jumping a chain-link fence into the parking area. Either by accident or design, however, the attache case, unlike Defendant, did not clear the fence and was retrieved by Capone.

It is unclear whether Defendant--whether or not Defendant intended to leave the attache case behind. It is also uncertain whether Jenkins had taken the suitcase off

the conveyer belt before Defendant bolted for the door. I find that removal of the suitcase from the conveyer belt took place after the Defendant's escape commenced.

Defendant's wallet and a rental car receipt were found in the parking lot. The suitcase was forced open and two kilos of cocaine were found, proving that Capone's hunch was a good deal sounder than the average prediction of Jimmy the Greek on the football pregame shows.

The Government does not intend to offer any evidence from the attache case or the wallet.

The Government argues:

1. No stop occurred;

2. If there was a stop, no seizure took place;

3. If there was a stop, founded suspicion for it existed;

4. In any event, there was consent to the stop, to questioning, and to search of

the suitcase.

Now, perhaps the Government concedes that consent to search the attache case was revoked when Chambers bolted.

No. 5, in any event, Defendant abandoned the suitcase, the only item in which we are currently interested.

Defendant, on the contrary, argues:

1. There was a seizure for which no probable cause or founded suspicion existed;

2. If no seizure occurred, there was an investigatory stop for which no founded suspicion or insufficient founded suspicion existed;

3. If consent was voiced or communicated, it was not freely given and hence invalid;

4. In any event, no consent was given as to the suitcase, nor was it abandoned.

If I follow Mendenhall, I would deny the motion; if I follow Reed, I would grant the motion. Reed is no laconic as to be of

almost no help, especially in light of Mendenhall. Mendenhall suffers from loquocity, not laconicness, and is similarly uninstructive. But chose I must, without any particular help from Ninth Circuit opinions. I mention that in regards to a couple of cases that you gentlemen may be interest in studying U.S. vs. Allen, 644 F. 2d, 749, U.S. v. Pitano, 649 F. 2d 724. I deny the motion to suppress.

Capone's hunch, while found, was just that, a hunch. But his contact with Defendant was neither terrorizing, overbearing or otherwise inappropriate. He simply asked Defendant to talk to him. The Defendant chose not to do so, though the facts established at the hearing show he was absolutely free to refuse. Defendant was similarly free to choose to talk where the encounter occurred in the terminal rather than in the interview room; Defendant was similarly free to refuse to allow inspection

of his suitcase and attache case.

He chose to do so freely and cannot now complain.

I find and hold there was no seizure; there was, indeed, no stop, as that term has been used. If, however, this finding or conclusion is in error, I further find that if a stop had occurred. it was based upon the consent which was present and which was communicated by the Defendant. This was proved by the Government by a preponderance of the evidence. I find and hold that such consent covered both the suitcase and the attache case, though I need not make the consent finding as to the attache case since no use of it is to be made.

As to the factor of the abandonment, I find and hold that Defendant abandoned the suitcase when he fled. If it were necessary to determine the abandonment of the attache case, since the Government has the burden, its proof fails in that regard.

If this ruling is in error in view of Reed v. Georgia, I leave it to the Court of Appeals to say so.

The foregoing are findings and conclusions under Rule 23.

United States of America vs.

United States District Court for

DEFENDANT ROOSEVELT CHAMBERS

THE DISTRICT OF DC 20

DOCKET NO. Crim-10[illegible]

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH: February DAY: 4 YEAR: 1982

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL David Elder
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of
[ ] NOT GUILTY. Defendant is discharged
[ ] GUILTY.

Defendant has been convicted as charged of the offense(s) of interstate travel to promote racketeering, in violation of 18 USC 1952(a)(3) and 2, as charged in the indictment.

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged
[X] GUILTY.

Defendant has been convicted as charged of the offense(s) of interstate travel to promote racketeering in violation of 18 USC 1952(a)(3) and 2, as charged in the indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years, 18 USC 4205(a) and fined in the amount of $10,000.00.

SPECIAL CONDITIONS OF

Entered on the Docket on 2-11-82
ROBERT M. CHRIST
By [illegible] Deputy

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Certified to be a true and correct copy of original filed in my office.
Dated 2-11-82
Robert M. Christ, Clerk
By [illegible] Deputy

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

James M Burns

JAMES M. BURNS

Date 2-11-82

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	C.A. No. 82-1113
v.	)	D.C. #CR 81-109 BU
ROOSEVELT CHAMBERS, Defendant-Appellant.	)	MEMORANDUM

Argued and Submitted -- October 6, 1982

Appeal from the United States District Court
for the District of Oregon
The Honorable James M. Burns, Chief Judge, Presidin

Before: WALLACE, FARRIS and POOLE, Circuit Judges

The defendant-appellant Roosevelt Chambers appeals his conviction of interstate travel in aid of racketeering, 18 U.S.C. §§1952(a)(3) and 2. Because we find that the district court did not err in determining that the initial encounter between Chambers and the law enforcement officer did not constitute a seizure and that Chambers' consent to the search of the suitcase was

valid, we affirm the conviction.

Chambers contends that the confrontation between himself and Officer Capone as he left the airlines ticket counter constituted a seizure within the meaning of the fourth amendment. The essential inquiry is whether at the point when Chambers was stopped, a reasonable person in Chambers' position would have felt free to leave. United States v. Mendenhall, 446 U.S. 544, 552-55 (1980) (opinion by Stewart, J., joined by Rehnquist, J.); Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968); United States v. Patino, 649 F. 2d 724, 726-27 (9th Cir. 1981). Whether the act of staying and answering questions was voluntary is "largely a factual inquiry dependent upon the totality of the circumstances,' and deference must be given to the finding of the district court unless it is clearly erroneous. United States v. Patino, 649 F. 2d at 727.

The stipulated facts indicate that the defendant's mobility was not impaired, the

questions were routine and brief, the atmosphere was not "dominated" by law enforcement personnel, and the defendant agreed to answer the questions "in a spirit of apparent cooperation." United States v. Beale, 674 F. 2d 1327, 1329-30 (9th Cir. 1982) (citations omitted). The facts of this case closely parallel those of Beale insofar as the airport encounter between the defendant and the officer is concerned, and as in Beale, we find no evidence of a clearly erroneous determination on the part of the district court in its finding that the encounter was not a seizure within the meaning of the fourth amendment.

Because we do not find that the encounter between Chambers and the officer was a seizure, it follows that the consent obtained from Chambers for the search of his suitcase was not in any way "tainted." Wong Sun v. United States, 371 U.S. 471 (1963); United States v. Chamberlin, 644 F. 2d 1262, 1268-69 (9th Cit. 1980), cert.

denied, 453 U.S. 914 (1981). The consent of course must be freely given, and here the district court found that the government met its burden in demonstrating that the consent was voluntary. Since the voluntariness of the consent "is a question of fact to be determined from the totality of all the circumstances," Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973), the district court's finding must be upheld unless clearly erroneous. No showing has been made that the district court so erred.

The contention that Chambers' subsequent flight acted to revoke his earlier consent to the search of the suitcase is without merit.

The judgment of the district court is accordingly AFFIRMED.